subject to an express condition requiring its use for a particular purpose, all land which at the commencement of the Act is country land or town or village land held under Land Office title becomes subject at the commencement of the Act to an implied condition that it shall be used for agricultural purposes only and all other land that is held under Registry title shall become subject to an implied condition, expressed, curiously but purposely, in a negative manner "that it shall be used neither for agricultural nor for industrial purposes." Express provisions exist in the section for the continued use of the land to which it had been put prior to the commencement of the Act. Such continued use would not be unlawful.

From this imposition of a category of use by statutory implication, it follows that whenever it is desired to use the land differently from that to which the land is for the time being subject to (in the case of land alienated before the commencement, it would be the implied condition imposed by section 53), the proprietor must apply for alteration of the category of land use under the requirements of section 124. This court accordingly held in *Garden City, supra,* that since the title was "neither for agricultural nor for industrial purposes" and there is no necessary consequence that it was for the only other purpose, viz. for building purposes, it was incumbent on the proprietor to apply under the second part of section 124(a) for the imposition, not the alteration, of a category of use to which the land would be put.

Where the land as in this case is held under a Land Office title and by section 53(2), the implied category of land use is agricultural and while the continued use of the land for the flats built on it is lawful under the proviso, the issue of title to the sub-divisional portion, sought by the respondents, cannot continue a use not known to the National Land Code or delay or frustrate the implied system of land use by any contention that the new title does not need to have imposed on it one of the three recognized categories of land use.

Order accordingly.

Solicitors: *Shearn Delamore & Co.*

FUNG KEONG RUBBER MANUFACTURING (M) SDN. BHD. v. LEE ENG KIAT & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Syed Othman & Salleh Abas F.JJ.) October 3 & December 22, 1980]
[Kuala Lumpur — Federal Court Civil Appeal No. 150 of 1979]

Industrial Law — Dismissal of workmen not members of trade union — Representations to Director-General to be made within one month of dismissal — Representations made after one-month — Reference by Minister to Industrial Court — Jurisdiction — Prohibition issued — Industrial Relations Act, 1967, s. 20(1).

Administrative Law — Prohibition — Reference by Minister to Industrial Court — Jurisdiction — Delay in applying for prohibition — Application not too late so long as something left for it to operate upon — Industrial Relations Act, 1967, s. 20(1).

In this case the appellants had dismissed the 1st and 2nd respondents from their employment on November 17, 1973 on the grounds that they were suspected of being involved in theft of property at the appellants' factory premises. Subsequently in June 1976 the two respondents were charged in court but were acquitted. The two respondents thereupon applied to the appellants to re-employ them but the appellants refused. The respondents then made representations to the Director-General of Industrial Relations and when efforts at a settlement failed the Director notified the matter to the Minister, who referred the matter to the Industrial Court on September 30, 1976. The Industrial Court was invited to determine the preliminary issue whether it had jurisdiction and it held in the circumstances it could hear the claim. The appellants applied to the High Court for an order of prohibition but this was refused. The appellants thereupon appealed to the Federal Court.

Held: (1) under section 20(1) of the Industrial Relations Act, 1967, a workmen who claims re-instatement for wrongful dismissal must present his claim within one month of the dismissal. If the claim is not made within one month, the Industrial Court has no jurisdiction to consider the claim;

(2) in this case as the claim was made well outside the time limit the court could interfere with the exercise of the Minister's discretion in referring the matter to the Industrial Court and the Industrial Court should have held that it was wrongly conferred with jurisdiction;

(3) although there was a delay in the application for prohibition, so long as there remained something to which prohibition can apply, some act which the industrial court if not prohibited may do in excess of its jurisdiction, prohibition may lie.

Cases referred to:-

(1) *Vine* v. *National Dock Labour Board* [1957] A.C. 488, 500, 507.

(2) *Francis* v. *Municipal Councillors of Kuala Lumpur* [1962] 1 W.L.R. 1411; [1962] M.L.J. 407.

(3) *Wall's Meat Co. Ltd.* v. *Khan* [1979] I.C.R. 52.

(4) *National Union of Hotel, Bar and Restaurant Workers* v. *Minister of Labour and Manpower* [1980] 1 M.L.J. 189.

(5) *Estate and Trust Agencies (1927) Ltd.* v. *Singapore Improvement Trust* [1937] A.C. 898; [1937] M.L.J. 161.

(6) *In re London Scottish Permanent Building Society* (1893) 63 L.J. (Q.B.) 112, 113.

(7) *Rex* v. *North, ex parte Oakey* [1927] 1 K.B. 491.

The following cases were also referred to in argument:

C. Devan Nair v. *Yong Kuan Teik* [1967] 2 A.C. 31, [1967] 1 M.L.J. 261; *South-East Asia Fire Bricks Sdn. Bhd.* v. *Non-Metallic Mineral Products Manufacturing Employees Union & Ors.* [1980] 2 M.L.J. 165; *Minister of Labour and Manpower & Anor.* v. *Wix Corporation South-East Asia Sdn. Bhd.* [1980] 2 M.L.J. 248; *Kesatuan Pekerja-Pekerja Kenderaan Sri Jaya* v. *Industrial Court & Ors.* [1970] 1 M.L.J. 78; *Selangor Omnibus Co. Ltd.* v. *Transport Worker's Union, Malaya & Ors.* [1968] 1 M.L.J. 242.

FEDERAL COURT.

V.T. Nathan for the appellants.

G.T. Rajan for the 1st respondents.

T. Thomas for the 2nd respondent.

Cur. Adv. Vult.

Raja Azlan Shah C.J. (Malaya) (read by Syed Othman F.J.): On December 24, 1976 and June 16, 1977 an industrial court assumed jurisdiction to hear the complaint of Lee Eng Kiat (respondent 1) and S. Balasuppramaniyam (respondent 2), the chief security guard and security guard respectively, that they had been dismissed without just cause or excuse by their employer, the appellants. It assumed jurisdiction on the ground that section 20(1) of the Industrial Relations Act, 1967 (Act 177) does not impose an absolute obligation on a workman to make the representation within one month of the dismissal.

It also rejected the view of counsel that the word "may" refers to the discretion vested in the respondents either to bring the matter to the industrial court or to the common law court.

Section 20(1) of the Act is as follows:

"Where a workman who is not a member of a trade union of workmen considers that he has been dismissed without just cause or excuse by his employer he may, within one month of the dismissal, make representations in writing to the Director General to be reinstated in his former employment; the representations may be filed at the office of the Director General nearest to the place of employment from which the workman was dismissed."

The facts leading to the present appeal are as follows. Both the respondents (non-union members) were employed by the appellants as chief security guard and security guard some time in 1971. At about 2.00 a.m. on November 17, 1973, there was a report of theft at the appellants' factory premises. As a result of investigation conducted by the appellants on the spot, they found a substantial quantity of motor scooter tyres, motor scooter tubes, motor cycle tubes and motor car tubes manufactured by the appellants (total value of $560) in the boot of the respondent 1's car which was parked in the bicycle shed near the factory. Respondent 1 who was standing near the boot of his car admitted the theft and gave a written statement to that effect. Respondent 2 also admitted his part in the theft and he also gave a written statement to that effect. On the evidence available, the appellants were satisfied that the respondents were guilty of grave misconduct inconsistent with their express or implied conditions of employment. They were summarily dismissed.

A police report was immediately lodged. The respondents were taken into custody the same morning. They were charged with the theft of the said goods under section 381 of the Penal Code. They were granted bail. On June 21, 1976, they were (surprisingly) acquitted. On that date, some 31 months after their dismissal, they sought re-employment. The appellants refused to re-employ them. In July 1976, both respondents made representations to the Director General of Industrial Relations for reinstatement under section 20(1) of the Act. The Director General was not able to effect a settlement within the statutory period; he notified the outcome of it to the Minister who, exercising his discretion, referred the matter to the industrial court on September 30, 1976. The said court was invited to consider and determine a preliminary question, i.e., whether it had jurisdiction to entertain the claim in view of the time limit clause.

The industrial court found as a fact that both the respondents were summarily dismissed on November 17, 1973 and that time should run from that date. It also found that although there was inordinate delay in presenting the claim for reinstatement before the Director General, the said officer had considered this fact in the setting of all the other representations for reinstatement and all the facts and reasons for such delay. It further considered the fact that the Minister, after being notified by the Director General, thought fit to refer the representations to the industrial court whether or not to make an award. In those circumstances it came to the conclusion that the delay was such that the Minister could justifiably enlarge and had correctly enlarged the period and accordingly it was not for the industrial court to question the Minister's discretion and it would therefore proceed to hear the claim under section 20(3) of the Act.

In November, 1977, the appellants thereupon applied to the High Court for an order of prohibition to prohibit the industrial court from proceeding further in the matter.

The learned High Court judge who heard the application was of the opinion that it was for the Director General to decide whether the claim was made within the statutory time limit. He held that there was evidence for the Director General to find that the representations were made within time and that it was for the appellants to show that there was no such evidence. On that premise he was satisfied that the industrial court was conferred with jurisdiction and that it was not open to the court to question the Minister's discretion in referring the matter to it.

In the case of a claim for wrongful dismissal, a workman may bring an action for damages at common law. This is the usual remedy for breach of contract, e.g., a summary dismissal where the workman has not committed misconduct. The rewards, however, are rather meagre because in practice the damages are limited to the pay which would have been earned by the workman had the proper period of notice been given. He may even get less than the wages for the period of notice if it can be proved that he could obtain similar job immediately or during the notice period with some other employer. He cannot sue for wounded feelings or loss of reputation caused by a summary dismissal, where for instance he was dismissed on a groundless charge of dishonesty. At common law it is not possible for a wrongfully dismissed workman to obtain an order for reinstatement because the common law knew only one remedy, viz., an award of damages. Further, the courts will not normally "reinstate" a workman who has been wrongfully dismissed by granting a declaration that his dismissal was invalid: see *Vine* v. *National Dock Labour Board;*[1] *Francis* v. *Municipal Councillors of Kuala Lumpur.*[2] At the most it will declare that it was wrongful. However his common law right has been profoundably affected in this country by the system of industrial awards enacted in the Industrial Relations Act, 1967. The wrongfully dismissed workman can now look to the remedies provided by the arbitration system. He can now look to the authorities or his union to prosecute the employer and force the latter to reinstate him. Reinstatement, a statutorily recognized form of specific performance, has become a normal remedy and this coupled with a full refund of his wages could certainly far exceed the meagre damages normally granted at common law. The speedy and effective resolution of disputes or differences is clearly seen to be in the national interest, but it is also apparent that any attempt to impose a legal obligation without a prior exploration for a voluntary conciliation could aggravate rather than solve the problem. To this end the Director General is empowered by section 20 of the Act to offer assistance to the parties to the dispute to expedite a settlement by means of conciliatory meetings. The process is entirely voluntary and the Director General will not usually become involved

unless the workman fulfills the internal procedure as laid down by the section which is: "he may, within one month of the dismissal, make representations in writing to the Director General to be reinstated in his former employment." The word "may" in our view refers to the alternative remedy available to the wrongfully dismissed workmen to claim for reinstatement under our arbitration system. We say this because the general common law considerations applicable to contracts of employment have been modified, in the area to which industrial awards are applicable, to the advantage of the workman in relation to wrongful dismissals where he could now ask to be reinstated in his former employment.

In our view the whole purpose of this part of the legislation is to provide workmen with a cheap and speedy remedy to obtain reinstatement. Quite clearly it would be extraordinarily difficult for employers to keep industry going if claims for reinstatement on the ground of wrongful dismissal could be made many months or years, instead of the statutory period of one month, after dismissal had taken place. Under section 20(1) of the Act, a workman who claims reinstatement for wrongful dismissal is bound to comply with a very strict time limit. He must present his claim within one month of the dismissal. There is no similar escape clause as is provided by paragraph 21(4) of Schedule 1 to the (UK) Trade Union and Labour Relations Act, 1974, on the ground that it is "not practicable" to present a claim within the statutory period: see, for instance, *Wall's Meat Co. Ltd.* v. *Khan.*[3] It is for that special reason that the time-limit clause with no escape clause is inserted in the section. It is so strict that it goes to the jurisdiction of the industrial court to hear the complaint. By that we mean that, if the claim is presented just one day late, the court has no jurisdiction to consider it.

In the present case the respondents were summarily dismissed for theft. They were charged with it and did not make a claim for wrongful dismissal until after they were acquitted, that is, some 2 years and 7 months later. If it is argued that they had to wait for the outcome of the criminal case against them before making such claim, then we say that that argument is not acceptable; they are clearly time-barred as soon as the statutory period of one month has elapsed. If they were completely innocent they would do everything in their power to obtain redress and it would be surprising if they had not started making their claim for reinstatement within a comparatively short time and well within the statutory period. An innocent workman can be expected to put forward his claim at the earliest moment.

We cannot agree with the learned judge that it was for the Director-General to decide whether the claim was made within the time limit, and we think he went too far when he said that there was evidence for the Director-General to come to the conclusion that their claim was made within time. The determination of the issue whether the claim was made within the time limit involved mixed questions of law and fact for the industrial court, the fact being the ascertainment of the relevant conduct of the parties in pursuing their claim and the inferences proper to be drawn therefrom. Once that is ascertained, it is a question of law whether or not there was sufficient evidence that the claim was made in time. On the facts, we are of the view that the claim was presented well outside the time limit and that being so, it was for the Industrial Court to say that it was wrongly conferred with jurisdiction. In the circumstances it is open to this court to interfere with the exercise of the Minister's discretion in referring the matter to the Industrial Court. He had certainly exercised his discretion wrongly (see *National Union of Hotel, Bar and Restaurant Workers* v. *The Minister of Labour and Manpower*[4]). If an error of law by the Industrial Court can be seen as a misconception of its own jurisdiction and therefore an absence of jurisdiction, this court assumes a free-wheeling power to interfere by way of prohibition whenever it appears to it that some error of law going to its jurisdiction has been made by the Industrial Court.

Apart from the question of jurisdiction there remains a subsidiary matter to be decided, not the less important because it is one of a purely technical character. The respondents now say that the appellants were guilty of undue delay in applying for an order of prohibition and since the order is a matter of discretion we should refuse it. It is said that the application should have been made sometime in July, 1976, well before the Minister had referred the matter to the Industrial Court. It is not in dispute that the application was made in November, 1977. But, in our view, so long as there remains something to which prohibition can apply, some act which the Industrial Court if not prohibited may do in excess of its jurisdiction, prohibition may lie: see *Estate and Trust Agencies (1927) Ltd.* v. *Singapore Investment Trust.*[5] In such a case delay is immaterial. We would adopt the view expressed by R.S. Wright J., a judge who had great familiarity with this subject in *In re London Scottish Permanent Building Society*[6] that "an application for prohibition is never too late so long as there is something left for it to operate upon." In *Rex* v. *North ex parte Oakey,*[7] Scrutton L.J., after expressly approving this *dictum,* said (page 503):

> "When the sentence is unexecuted, a statement of intention to execute it may be followed by a writ of prohibition, however long a time may have elapsed since the original sentence was pronounced."

In the present case we are disposed to think that the court in its discretion would order prohibition to issue against the Industrial Court prohibiting it to proceed to hear the claim under section 20(1) of the Act on the ground of lack or absence of jurisdiction.

We would therefore allow the appeal with costs here and below.

Appeal allowed.

Solicitors: *Shearn Delamore & Co.; G.T. Rajan & Co.: Skrine & Co.*